


# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

Daniel J. Becker  
State Court Administrator  
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Deputy Court Administrator

## MEMORANDUM

**To:** Heather Mackenzie-Campbell, Audit Manager

**From:**  Brent Johnson, General Counsel

**Re:** Plea in Abeyance Fees

**Date:** December 18, 2002

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This memorandum is a response to the attached e-mail, which asks whether plea in abeyance fees may be paid into a trust account pending completion of the plea in abeyance agreement. Under the scenario that you have described, a trust fund cannot be established for the purpose of granting credits or refunds.

Utah Code Ann. § 77-2a-3(5)(a) points out an initial problem with the scheme that you have described. This section states that, upon accepting a plea in abeyance, the court may “order the defendant to pay a non-refundable plea in abeyance fee.” According to statute, the plea in abeyance fee is set through the agreement and is not subject to refund or offset through the course of the agreement. This statute indicates that a judge cannot grant a refund of a fee upon completion of an agreement. As we discussed at other times, the best course of action is to order the payment of a set fee and then increase the amount that is due, as a part of sentencing, if the defendant fails to complete the plea in abeyance agreement. Although courts have certainly found that it is easier to collect early and refund later, rather than suspend and collect later, refunding money does not appear to be an option.

The second problem with the scheme that you have described is found from all of the statutes that require funds to be paid to the state within certain time frames. Title 51, Chapter 4 and Title 51, Chapter 7, of the Utah Code, require “public funds” to be administered in a certain manner. Public funds that are earmarked for the state must be paid within a certain amount of time. The only exception to the requirement is if a trust fund is established by court order. However, this section only applies to the trust funds that are established in civil actions by civil litigants, or trust funds that are specifically established by state statute, such as bail money. A court can only establish a trust fund if the parties claiming title to the funds have specifically consented through stipulation or statute, or

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efficient, and independent system for the advancement of justice under the law.**

if the court has otherwise given notice to an interested party that a trust fund will be established. The court would be without authority to hold state funds in trust, because the state has not authorized these funds to be held in trust.

Please let me know if you have any questions about this memorandum. Although I can appreciate the county's desire to accomplish its business in this manner, they will simply have to find another way.